IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8797 OF 2005

Balkrishna Savliram Kale Petitioner

versus

Uttam Govind Kale & others Respondents

Ms.Sonal i/by Filji Frederic for petitioner.

M.S.Karnik for respondents 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. The petitioner is original defendant no.1 in Regular Civil suit No.189 of 2001 which is pending on the file of Civil Judge, Junior Division, Nashik Road. He is aggrieved by an order passed by the Trial Court on 12th September 2005 rejecting application (Exhibit-52) by which he prayed for setting aside an order (no written statement) and allowing him to file written statement. The Trial Court has rejected the application on the ground that the petitioner could not substantiate his pleas raised in the

application Exhibit-52. He could not explain as to why he failed to file written statement though sufficient opportunity was granted. No written statement order is passed as early as on 7th December 2002 and therefore, the delay of two years being unexplained, the application deserves to be rejected.

2. After perusing the application, for setting aside the order of no written statement, dated 20th September 2005, it is clear that the petitioner-original defendant no.2 was contesting the proceedings. He filed his version on merits to oppose the injunction application. He contested the same and he filed a Miscellaneous Civil Appeal as well. The order of no written statement was passed during pendency of the Civil Miscellaneous Appeal. The records were before the District Court and were sent back in 2003. However, later on, the petitioner could not file his written statement due to the circumstances which he had set out in his application. In my view, the delay of two years in the above facts and circumstances is not such as would justify completely shutting out the petitioner from the proceedings. It is not a case of deliberate inaction or utter carelessness and negligence.

It is true that the delay is of two years but the version of the petitioner and defendant no.1 being on record at earlier stage, in the interest of justice, this delay deserves to be condoned. Of course, by compensating the respondents 2 and 3 who are original plaintiffs. Accordingly, following order.

3. ORDER :- Application Exhibit-52 is allowed. Order under challenge is set aside. If the petitioner files his written statement within a period of 15 days from today as also pays costs quantified at Rs.2,500/- (Rs.Two thousand five hundred only), the said written statement shall be taken on record and thereupon the Trial Court should proceed further. Petition disposed of.

(S.C.DHARMADHIKARI, J.)